

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI *
JENNIFER L. RICHTER *
* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
(202) 296-0600

ROBERT LEWIS THOMPSON
GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986

TELECOPIER (202) 296-5572

RECEIVED

MAY 24 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 24, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Amendment of Section 73.202(b) FM Table of
Allotments (Cheyenne, Wyoming)
MM Docket No. 93-20, RM-8177
Opposition to Acceptance of "Joint Reply Comments"

Dear Ms. Searcy:

On behalf of Jackalope Broadcasting, we hereby submit an

DOCKET FILE COPY ORIGINAL

RECEIVED

MAY 24 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	MM Docket No. 93-20
)	
Amendment of Section 73.202(b))	RM-8177
FM Broadcast Stations)	
(Cheyenne, Wyoming))	

To: Chief, Allocations Branch

OPPOSITION TO ACCEPTANCE OF "JOINT REPLY COMMENTS"

Jackalope Broadcasting, by counsel, hereby opposes the acceptance of the "Joint Reply Comments," filed in the above-captioned rule making proceeding on April 27, 1993, by KMUS, Inc. and Blue Sky Broadcasting, Inc. ("Joint Licensees"). In support of this Opposition, the following is respectfully shown:

1. Joint Licensees' Joint Reply Comments is an unauthorized pleading and, as such, should not be accepted for filing or considered by the Commission in this proceeding. Although styled "reply comments," the Joint Reply Comments are actually late-filed comments. Section 1.415(c) of the Commission's Rules states that reply comments are to be filed "in reply to the original comments" in a rule making proceeding (emphasis added). Following the release of the Notice of Proposed Rule Making, there were no comments filed by the comment deadline of April 12, 1993, with the exception of Jackalope's own Comments restating its present intention to apply for and build the station.

2. Joint Licensees submitted their filing on April 27, 1993, the deadline for submitting reply comments in this proceeding. However, Joint Licensees' "reply" comments cannot be deemed to be in reply to Jackalope's Comments because Jackalope's

filing stated nothing except for its continuing intentions. Joint Licensees' "reply" comments are substantively akin to an interested party's comments opposing a proposed allotment in a rule making proceeding. As the Commission stated in the rule making proceeding in Parker, Arizona, by Order, 4 FCC Rcd 540 at ¶ 4 (1988), "ad hoc departures from the present pleading cycle procedures present greater potential for confusion."

3. Joint Licensees are attempting to comment in this proceeding in an untimely fashion without requesting an extension of time within which to file comments, pursuant to Section 1.46(b) of the Commission's Rules. Joint Licensees do not claim that, for whatever reason, they could not have submitted their substantive comments by the proper deadline. See Santa Isabel, Puerto Rico, et al., 3 FCC Rcd 2336 (1988), where the party filing tardy comments did not claim that it could not have learned of the proposal in time to file timely comments.

4. Acceptance of the so-called "reply" comments would serve to delay this proceeding because Joint Licensees raise matters before the Commission which warrant a response by Jackalope. In this regard, Jackalope is filing simultaneously herewith a "Motion for Leave to File Supplemental Comments" and "Supplemental Comments" in response to the Joint Reply Comments, so that it may be afforded the opportunity to respond to the matters raised by Joint Licensees. In the event the Commission declines to accept the Joint Reply Comments, Jackalope's Motion for Leave to File Supplemental Comments would be moot.

CONCLUSION

In light of the foregoing, Jackalope Broadcasting respectfully requests that the Commission disregard the so-called Joint Reply Comments filed by KMUS, Inc. and Blue Sky Broadcasting, Inc.

Respectfully submitted,

JACKALOPE BROADCASTING

By *Louise Cybulski*
John F. Garziglia
Louise Cybulski

Its Attorneys

Pepper & Corazzini
1776 K Street, NW
Suite 200
Washington, DC 20006
202/296-0600


May 24, 1993

CERTIFICATE OF SERVICE

I, Tracey S. Westbrook, a secretary in the law firm of Pepper and Corazzini, do hereby certify that copies of the foregoing "Opposition to Acceptance of 'Joint Reply Comments'" were served this 24th day of May, 1993, by first-class United States mail, postage prepaid, to the following:

* Mr. Michael Ruger
Chief, Allocations Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 8318
Washington, D.C. 20554

Meredith S. Senter, Jr., Esquire
Stephen D. Baruch, Esquire
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(Counsel for KMUS, Inc. and
Blue Sky Broadcasting, Inc.)


Tracey S. Westbrook

* Hand Delivery